

Internal Revenue Service

Number: **202110014**

Release Date: 3/12/2021

Index Number: 367.03-10

Department of the Treasury
Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B04

PLR-118082-20

Date:

December 16, 2020

Legend

Taxpayer =

Shareholder =

Successor =

Heir =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

Dear _____ :

This letter responds to your authorized representative's letter dated August 19, 2020, requesting a ruling under Treas. Reg. § 1.367(a)-8(k)(9)(iii). The material information submitted in that request is summarized below.

The ruling contained in this letter is based on facts and representations submitted by you and your representatives and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts and Applicable Law

On Date 1, Shareholder, a United States person, transferred stock of a domestic corporation to a foreign corporation ("Transferee Foreign Corporation") in exchange solely for a shares of Transferee Foreign Corporation ("TFC Stock") in a transfer described in section 354 ("Outbound Transfer"), and timely entered into a gain recognition agreement pursuant to Treas. Reg. § 1.367(a)-8 with respect to the Outbound Transfer ("Existing GRA").

On Date 2, Shareholder transferred b shares of TFC Stock to a grantor trust ("Trust"). For federal income tax purposes, the transfer of TFC Stock to Trust did not constitute a disposition and Shareholder continued to be the owner of such TFC Stock.

On Date 3, Shareholder died, resulting in, for federal income tax purposes:

- (i) Trust becoming a domestic non-grantor trust ("NGT"), and
- (ii) A deemed transfer of the TFC Stock that was held by Trust to NGT.

Successor is the current trustee of NGT. The beneficiaries of NGT are Shareholder's descendants.

Pursuant to Shareholder's will, and with respect to the shares of TFC Stock held directly by Shareholder (that is, not taking into account the TFC Stock held by NGT):

- (i) Heir, a non-resident alien individual, will receive c shares of TFC Stock, and
- (ii) Successor, a United States citizen, will receive the remaining d shares of TFC Stock.

If Successor were to recognize an amount of capital gain equal to the gain realized but not recognized by Shareholder on the Outbound Transfer, such gain would be subject

to the 20 percent maximum capital gain tax rate, plus the 3.8 percent tax on net investment income under section 1411, for a total federal income tax of \$e.

The value of the TFC Stock that would be transferred to Successor in accordance with Shareholder's will is estimated to be approximately \$f as of Date 3. The estimated fair market value of Successor's assets (other than the TFC Stock that will be transferred to Successor pursuant to Shareholder's will) net of liabilities is approximately \$g as of Date 4. Thus, the total estimated fair market value of Successor's assets is approximately \$h; of that amount, approximately \$i consists of liquid assets.

In general, gain subject to a gain recognition agreement is triggered under Treas. Reg. § 1.367(a)-8(j)(7), such that gain is recognized, if a U.S. transferor who is an individual dies. However, the death of a U.S. transferor will not constitute a triggering event if the person winding up the affairs of the U.S. transferor obtains a ruling from the Internal Revenue Service providing for one or more successors to the U.S. transferor under the gain recognition agreement. Treas. Reg. § 1.367(a)-8(k)(9)(iii). Thus, in order to avoid a triggering event with respect to the Existing GRA, a ruling is sought to provide for a successor to Shareholder under the Existing GRA pursuant to Treas. Reg. § 1.367(a)-8(k)(9)(iii).

Representations

Taxpayer makes the following representations with respect to its ruling request:

1. The Outbound Transfer satisfied all the requirements of Treas. Reg. § 1.367(a)-3(c)(1).
2. The Existing GRA has satisfied the requirements of Treas. Reg. § 1.367(a)-8 and any filings related to the Existing GRA, including Form 8838 and certifications under Treas. Reg. § 1.367(a)-8(g), have been timely filed.
3. Prior to Shareholder's death, no triggering event (within the meaning of Treas. Reg. § 1.367(a)-8(j)) has occurred with respect to the Existing GRA.

Ruling

Based solely on the information submitted and the representations set forth above, if Successor enters into a new gain recognition agreement that replaces the Existing GRA pursuant to the terms and conditions set forth in Treas. Reg. § 1.367(a)-8(c)(5), and extends the period of limitations on assessments of tax on the Outbound Transfer pursuant to Treas. Reg. § 1.367(a)-8(f)(2), Successor will be treated, under Treas. Reg. § 1.367(a)-8(k)(9)(iii), as a successor to Shareholder under the Existing GRA. As a result, the death of Shareholder, and the transfers of TFC Stock to Heir, NGT, and Successor described herein, will not constitute triggering events (within the meaning of Treas. Reg. § 1.367(a)-8(j)) with respect to the Existing GRA.

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

No opinion is expressed or implied about the federal income tax consequences of any other aspect of any transaction or item discussed or referenced in this letter, or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Outbound Transfer that are not specifically covered by this ruling. In particular, no opinion is expressed or implied as to whether the Outbound Transfer satisfied the requirements of Treas. Reg. §§ 1.367(a)-3(c)(1) and 1.367(a)-8.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

A copy of this ruling letter must be attached to the federal income tax return of each taxpayer involved for the taxable year in which the transactions described herein are completed. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its federal income tax return that sets forth the date and control number of this ruling.

Sincerely,

Robert B. Williams, Jr.
Senior Counsel, Branch 4
(International)

cc: